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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,624	11/16/1999	YUTAKA MAEDA	0879-0244P	3184

7590

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EXAMINER
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JONES, HEATHER R

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/440,624	MAEDA, YUTAKA	
	Examiner	Art Unit	
	Heather R. Jones	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The affidavit filed on November 16, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Lee reference (U.S. Patent 6,614,477).
2. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Lee reference to either a constructive reduction to practice or an actual reduction to practice of Applicant. There is a lack of factual evidence showing diligence between dates July 30, 1998 and November 18, 1998. We know that on July 30, 1998 that the Applicant contacted the Attorney to prepare a patent specification with a deadline of September 7, 1998. We also know that on November 18, 1998 that the Applicant contacted the Attorney to file an application for a patent to the Patent Office. The Affidavit states that between July 30, 1998 and November 18, 1998 that the Applicant communicated with the Attorney on several occasions to discuss the invention and application, but there is no factual evidence to back that statement. There is also no evidence showing if the Attorney met the specification deadline of September 7, 1998 and when the Applicant actually received the specification for review.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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4. Claims 1, 2, and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (U.S. Patent 6,614,477) and in view of Applicant's admitted prior art.

Regarding claim 1, Lee et al. discloses an electronic camera, comprising: a display (it is implicit that the composite video signal will inherently go to a display); a detection device, which detects the brightness of the object (col. 4, line 67 - col. 5, line 3: it is inherent that a detection device is detecting the brightness); an imaging device (42) which captures the sequence of images and outputs the image signals for the sequence of images at a rate defined by an imaging cycle for the imaging device, the imaging cycle defining a maximum exposure period for the imaging device for the sequence of images (for example, if the maximum imaging cycle is 1/60 then the maximum exposure period would be defined as 1/60 as well; col. 2, lines 12-22; col. 3, lines 25-63); a changing device (55: variable frame rate image capture controller) which automatically changes the imaging cycle of the imaging device according to the brightness of the object, thereby changing the maximum exposure period for the imaging device (col. 4, line 53 - col. 5, line 3; col. 5, lines 43-45); and that the image signals in the image memory are read out with a predetermined interval and outputted to the display (col. 2, lines 44-51: the image data is read out at the same rate that the image signal is captured, therefore the rate at which the image data is read out is a predetermined interval). Lee et al. also discloses a signal processor (54) for image processing. Furthermore, Official Notice is taken that

the signal processor includes an image memory for temporarily storing the image signals sequentially outputted from the imaging device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a signal processor to temporarily store the image signals outputted by the imaging device into a buffer before outputting to the display in order to accommodate the timing differences between the signal processor and the display). However, Lee et al. fails to disclose a controller which controls the display to display the sequence of images according to the image signals while the imaging device is capturing subsequent images, such that the display shows a live image of the captured sequence of images to enable determination of an image-capturing angle of view.

Referring to the admitted prior art, the admitted prior art teaches a display (LCD), and an electronic camera that is capable of displaying a live image on the LCD so that the LCD can be used as a viewfinder to determine the image-capturing angle of view (page 1, lines 9-14). The controller that controls the display to display the image according to the image signals while the imaging device is capturing the live image is inherently taught.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the practice of changing the imaging cycle taught by Lee et al. with the practice of displaying a live view taught by the admitted prior art to make an apparatus wherein the imaging device continually outputs an image signal to the display in the cycle and wherein the cycle may be

changed in order to detect how the image quality of a desired scene changes according to the varying exposure times and imaging cycles.

Regarding claim **2**, Lee et al. in view of the admitted prior art discloses all subject matter as discussed with respect to claim 1 as well as the changing device is manually or automatically operated to change the cycle of the imaging device (Lee et al.: col. 5, lines 43-45).

Regarding claim **16**, Lee et al. in view of the admitted prior art discloses all the limitations as previously discussed with respect to claim 1 as well as disclosing that the electronic camera further comprises a signal processor for processing and temporarily storing the image signals outputted by the imaging device before outputting to the display (see claim 1 above).

Regarding claim **17**, Lee et al. in view of the admitted prior art discloses all the subject matter as discussed with claim 1, except that the electronic camera further comprises a memory card for storing select images outputted by the imaging device. Official Notice is taken that a memory card can be used to store select images outputted by the imaging device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a memory card to store select images outputted by the imaging device in order save the images most desired by the user.

Regarding claim **18**, Lee et al. in view of the admitted prior art discloses all subject matter as discussed with respect to claim 1 as well as disclosing that the

rate is a video rate (col. 2, lines 12-14), and the changing device (55) changes the video rate to enable the imaging device to output brighter images to the display (it is implicit that the longer the longer exposure period is the brighter the image will be, which in turn the display will inherently display a brighter image when the video rate is longer because the longer the video rate is the longer the exposure period can be).

Regarding claim **19**, Lee et al. in view of the admitted prior art discloses all subject matter as discussed with respect to claim 1 as well as disclosing the imaging device is a charge coupled device (CCD) (Lee et al.: reference character "42") that captures the sequence of images.

Regarding claims **20-26**, these are method claims corresponding to the apparatus claims 1, 2, and 16-19. Therefore, claims 20-26 are analyzed and rejected as previously discussed with respect to claims 1, 2, and 16-19.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Takaiwa (U.S. Patent 4,894,723) discloses an image sensing apparatus wherein when the object image picked up by the image pickup element as the image pickup means is displayed in, for example, the electronic view finder as the display means through the supply means, the drive speed of the image

pickup element is set to an adjusted value by the control means in accordance with the brightness of the object measured by the light measuring means.

b. Gfeller et al. (U.S. Patent 4,460,263) discloses an apparatus wherein in the operating mode "external measurement" of the brightness also in the "internal measurement" mode, any parameter governing the exposure can be varied prior to actuating the shutter release, during which the exposure time  $t$  is instantly recalculated automatically by the exposure computer and the resulting new exposure time is immediately indicated on the display.

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

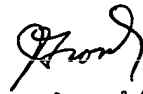
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather R. Jones whose telephone number is 571-272-7368. The examiner can normally be reached on Mon. - Thurs.: 7:00 am - 4:30 pm, and every other Fri.: 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on 571-272-7950. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Heather R Jones  
Examiner  
Art Unit 2616

HRJ  
November 29, 2005

  
James J. Groody  
Supervisory Patent Examiner  
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